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Rs. 39,942-3-7. He also mentions that there is some difference in the accounts of the merchants and in the statement making up the figure of Rs. 39,942-3-7. From a consideration of those two points, he expresses an opinion that the prosecution has failed to prove a criminal breach of trust in respect of the item set out in the charge, and what remains of the case of the prosecution would be a charge of criminal breach of trust in respect of an item, which is indefinite. It may be possible on a consideration of the present evidence to arrive at a definite conclusion as to the amount in respect of which a criminal breach of trust has been committed by the accused. That enquiry, in our opinion, will be better conducted by the learned Chief Presidency Magistrate, who has heard a great part of the evidence and has had the opportunity of observing the demeanour of witnesses in the case.

I concur in the order proposed by my learned brother.

Acquittal set aside.

R. R.

CRIMINAL REVISION

Before Mr. Justice Fawcett and Mr. Justice Mirza.

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Indian Penal Code (Act XLV of 1860), section 186—Obstruction to public servant—Obstruction to agent of public servant.

The complainant, a public servant, went with a menial to the compound of the accused to remove an encroachment on Government land. While the menial, under the orders of the complainant, was putting his scythe to the hedge to cut it, the accused caught hold of the scythe and threatened him. The complainant, therefore, apprehending violence, retired. On a prosecution of the accused for an offence punishable under section 186 of the Indian Penal Code :—

Held, that the act of the accused in actually laying hold of the scythe was an act of physical obstruction which came under section 186 of the Indian Penal Code.

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Held, further, that the obstruction offered to the menial was tantamount to obstruction to the complainant who was present at the time and under whose orders the encroachment was being removed.

Held, therefore, the accused was guilty of an offence punishable under section 186 of the Indian Penal Code.

THIS was an application under the criminal revisional jurisdiction against conviction and sentence passed by I. T. Almaula, Sub-Divisional Magistrate, First Class, N. D., Surat.

The facts appear stated in the judgment.

P. A. Dhruva, for *H. V. Divatia*, for the accused.

P. B. Shingne, Government Pleader, for the Crown.

FAWCETT, J.—In this case the Magistrate has convicted the petitioner of an offence under section 186, Indian Penal Code. The facts found are that a Circle Inspector had gone to the *wada* of the petitioner, under orders of the District Deputy Collector, with a Panch in order to remove an alleged encroachment. He took with him one Lalia, who is the son of a village servant (a *vethia*). This Lalia was asked to remove a portion of a hedge, as being part of the encroachment. As soon as Lalia put his scythe in the hedge to do this, the accused came out from his house and caught hold of the scythe and said "I will see who will remove the encroachment." Lalia was thus stopped from doing the work, and the Circle Inspector and the Panch, being afraid that if they persisted some mischief might result, went away.

The petitioner was held thereby to have been guilty of obstructing a public servant, namely, the Circle Inspector, in discharge of his public functions under section 186, Indian Penal Code, and was sentenced to pay a fine of Rs. 40.

It is contended that there was no obstruction within the meaning of section 186, and that in any case there

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was no obstruction to a public servant in the discharge of his public functions under that section.

As regards the first point as to whether there was any obstruction, the act of the accused in actually laying hold of the scythe, with an indication that he would prevent the scythe being used to remove the hedge, is certainly an act of physical obstruction which would, in my opinion, come under the section. There is a difference between a case like this and one where a person merely dissuades other people from rendering certain services to a public servant, or spreads false reports so as to prevent parents bringing children for vaccination, and so on, in regard to which there are authorities for saying that there is no obstruction within the meaning of section 186. In this case the accused did not merely try to dissuade Lalia from starting to remove the hedge, but took physical action with a view to prevent it. Therefore I think there is no substance in the first point.

The main question is whether inasmuch as the obstruction was offered not to any action of the Circle Inspector himself but to Lalia, who was himself not a public servant, the case falls under section 186. In my opinion the case is one where the maxim *qui facit per alium facit per se* can be properly applied. In the case of removing an encroachment, a public servant has, ordinarily, only to see that the encroachment is removed. He is not, either by law or by practice, required to do the whole act of removing the encroachment by his own hands. He can employ agents for such a manual task, and Lalia was so employed. If the agent is obstructed in doing what he is legitimately required to do by a public servant actually present at the time of the removal, then there is an obstruction offered to the public servant himself, because what he is doing by the

hand of that agent is really, in the eyes of the law, something he is actually doing himself.

We have been referred to a decision of the Lahore High Court in *Matu Ram* v. *Emperor*,[1] as an authority for the contrary view. In that case a Naib-Tahsildar visited the village of the accused, where he was told by the Lambardar, who, I understand, is a village servant, that the accused kept several shops and ought to be assessed to income-tax. A dispute took place between the Lambardar and the accused, and in the course of the quarrel the latter beat the former, who as a result declined to render any help to the Naib-Tahsildar in his investigation. The accused were convicted under section 186 on the ground that they had obstructed the Naib-Tahsildar in the execution of his duty. But the Chief Justice of the Lahore High Court held that this view was not justified. He says (p. 595) :—

"The learned Magistrate does not find that the petitioners either assaulted the Naib-Tahsildar or made any gestures, and I am not prepared to hold that the mere fact that the *Lambardars* who were assaulted declined to render any help to the Naib-Tahsildar. . . . can be viewed as an obstruction caused by the petitioners."

I agree with the Government Pleader that that is a different sort of case to the present. Here an act of obstruction was done to a person, who was not merely one who might assist a public servant, if he is willing, but a person who was actually doing something at the request of a public servant in execution of a particular duty which that public servant had to perform. The other case is very analogous to those about dissuading people from assisting public servants before they have actually started to perform a duty, such as I have already referred to (cf. *Emperor* v. *Ram Ghulam Singh*[2]). If the Lahore ruling is intended to go further, then I respectfully dissent from it. Therefore

[1] (1922) 24 Cr. L. J. 594. [2] (1925) 47 All. 579 at p. 581.

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I think that the facts found justify the conviction of the accused. I would dismiss the application.

MIRZA, J. :—I agree.

Rule discharged.

R. R.

APPELLATE CIVIL

Before Mr. Justice Madgavkar and Mr. Justice Patkar.

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RUDRAPPA VIRAPPA MENSINKAI (ORIGINAL DEFENDANT), APPELLANT v. BASHETTAPPA CHENBASAPPA NEELI (ORIGINAL PLAINTIFF), RESPONDENT.*

Decree—Execution—Execution transferred to Collector—Date fixed for sale—Stay order obtained from Court—Sale held before order transmitted to Mamlatdar—Application to set aside sale made to Court—Auction purchaser necessary party—Application to adjourn sale lay to Collector—Default on the part of judgment-debtor—Civil Procedure Code (Act V of 1908), section 68.

A decree obtained by the plaintiff was transferred to the Collector for execution and the sale of immoveable property of the judgment-debtor was fixed for March 28, 1925. On that date, the judgment-debtor deposited Rs. 300 in the Court of the Subordinate Judge who passed the decree and applied for stay of execution and obtained it. But before the order for stay could be transmitted to the Mamlatdar who was holding the sale in the same town, the property was sold for Rs. 2,000. On April 6, 1925, the judgment-debtor applied to the Court to set aside the sale on the ground that, the stay having been obtained before the sale actually took place, the sale was void. The auction purchaser was not made a party to the application. Both the lower Courts dismissed the application. On appeal to the High Court,

Held, (1) that the execution and the sale having been transferred to the Collector under section 68 of the Civil Procedure Code, such an application to adjourn the sale lay to the Collector rather than to the decreeing Court.

(2) That the original application for stay of execution being one not falling under section 47 of the Civil Procedure Code, no second appeal lay to the High Court.

Hukum Chand Boid v. *Kamalanand Singh*,[1] *Venkatachalapati Rao* v. *Kameswaramma*,[2] referred to.

(3) That the application of April 6, 1925, being in terms an application to set aside the sale, the auction-purchaser was a necessary party.

(4) That the application to set aside the sale must fail as the judgment-debtor, being aware that the sale was to be held on March 28, 1925, took no steps up to that very day, almost till the very hour of the sale, rendering it impossible to transmit the stay order in time.

*Appeal No. 44 of 1926 under the Letters Patent.

[1] (1905) 33 Cal. 927. [2] (1917) 41 Mad. 151.